

Before the
Federal Communications Commission
Washington, D.C. 20054

In the Matter of

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The Proposed Extension of Part 4 of the
Commission's Rules Regarding outage
Reporting to Interconnected Voice Over
Internet Protocol Service Providers and
Broadband Internet Service Providers

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PS Docket No. 11-82

To: The Commission

COMMENTS OF THE UNDERSIGNED FIXED WIRELESS INTERNET SERVICE PROVIDERS

We as a group of Fixed Wireless Internet Service Providers wish to respond to the above Notice of Proposed Rulemaking ("NPRM"). We feel that as Wireless Internet Service Providers ("WISP's") we cannot be legally grouped into regulations intended for Title II Common Carriers as we are not qualified in this group, do not derive any of their benefits such as USF monies or Right of Way access. We, as simple broadband providers do not supply voice products, it is considered a service by a third party just as if Google or Netflix is, we have no control over their operation and disagree with being responsible.

We do not under estimate the important role that the Internet has become in daily operations to many business and residential customers. We understand that the numbers of applications for use on the Internet are increasing rapidly and some of those are replacing traditional services such as Telephone and Television.

Discussion

As the revenue shifts from traditional land-lines to cell and Voice over Internet Protocol (VoIP) we recognize that the FCC and large carriers do not have the data to make knowledgeable statements as to the dependability of usage needed by emergency communications and government. The difficulty comes as two very different problems:

- 1) When Broadband is down Voice and other services also suffer so the desire to group any Internet Provider to monitor outages is understandable but misguided. Few if any Internet companies provide Service Level Agreements (SLA's) based on the immaturity of radio equipment (in the case of WISP's) which continues to change technology on a typical three year cycle. Nowhere in the current technology is built in monitoring, let alone, the ability to report outages exist. The desire to use "Ping" programs are fallible due to events on networks such as Denial of Service (DoS) attacks which simply slow the network enough to operate but not enough to carry some high usage services such as Voice. Customers know up front that use of VoIP on non-wireline services is "Best Available" and thus reporting would be unreliable and often false. In addition many customers turn off their Internet appliances when they leave town, how would this apply and be tracked? Confusing us with wired phone service, which is always on, cannot compare to understanding how the Internet works.
- 2) Another point we must make is that WISP's are small privately held (for the most part) businesses. The line between a provider of a product and a utility may be thinning but is still very much a fact. For instance the United Parcel Service does not have to report when they have a truck break down and customers don't get their product. We view our services more along the lines of an ordered product with a "Best Ability" to provide service. Our industry has none of the protections of a utility such as "Right of Way", or conversely set pricing by a governmental agency. Why we should have to report outages on our entire service for the few customers who choose to use their Internet for Voice services is forcing utility requirements on a non-regulated industry.

The desire of the FCC, Legislative and other Governmental Agencies to group Internet Service Providers into regulated systems is disturbing. Our trade group WISPA embraced The *Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA)* and worked with numerous agencies to assure cooperation for Investigations voluntarily. No one can say our industry isn't working aggressively to assist Public Service in every way possible. Now with the proposed Outage Reporting Standards it has the feel of an onslaught of unfunded mandates with fines that could easily bankrupt a small service provider potentially causing an outage for hundreds to thousands of non-Voice using customers. Is our only alternative to ban Voice usage in order to be free of these reporting requirements that could cause all of our other customers to lose service?

Objections

Some filing parties seek unacceptable compromise such as legally defining a small Internet Service Provider ("ISP"), comparing our industry to the 1992 Cable Act (they are regulated, we are not), and inclusion of data from Form 477 in any regulatory or punitive manner to be held in other than standard reporting for size of service area.

We do not feel it is appropriate to define us then ask for exemption as it would set the precedence that we are eligible to then be regulated whereas we are not now. Our belief is that we don't belong being eligible to be regulated as a non-utility.

Current providers who identify themselves as Voice services should be required to hold one of the Local Exchange Carrier classifications and they themselves responsible for Outage Requirements as they are considered a utility enjoying the rights of access and therefore qualify for regulation such as the ones proposed by the FCC.

Conclusion

To put it bluntly, we are not under Title II, we are not Common Carriers, and to put us in the classification for regulations sets a terrible precedence for future regulating of our industry. We don't believe the FCC has the authority to extend the Commission's Part 4 rules to Broadband and desire that non-regulated providers be deleted from the Outage Regulations and the Commission focus on those who specialize on VoIP services who are registered utilities not simple Internet. It is not our concern that VoIP will blame the ISP for outages because they are providing a service without our knowledge over an open broadband platform. The proposed reporting technology is flawed and few if any of the contracts in place even require "SLA" delivery of Internet. Much like the House of Representative proposal to require static addresses for all users these regulations are poorly thought out and technically unfeasible. The implementation of such programs serves as an undue burden on Internet Providers; it will slow the growth of the Internet to rural areas as funds used to expand will instead have to be used to rebuild our networks to meet the growing Governmental regulations. If Common Carrier providers accept your Outage requirements they will likely use government funding available to regulated agencies such as USF to pay for equipment to implement them. We have no such funding mechanism so the major burden of this action is on the WISP. Some WISP's may become so disenchanted with the requirements for a specific independent system such as VoIP that they may block those ports further causing havoc to customers who want the Internet to be a free and open product, just as we do.

Respectfully submitted by the below Fixed Wireless Internet Service Providers,

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